

Fiscal Service, Treasury

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from payment an amount equal to the debt. Fiscal Service also may withhold an amount sufficient to pay the cost of litigating the debt to judgment. Fiscal Service then will consult with the underlying agency and the Department of Justice regarding the necessity for a civil action to reduce the debt to judgment. If litigation proceeds and is successful, Fiscal Service will set off the debt. If the suit is unsuccessful, Fiscal Service will pay the withheld amount with interest accruing from the date when payment would have been made.

Subpart D—Interest and Litigation Costs

§ 256.30 When does the Judgment Fund pay interest?

Interest is paid when it is ordered in the judgment pursuant to a statutory, contractual or constitutional waiver of sovereign immunity. Such waivers may include interest as set forth under 41 U.S.C. 611 (Contract Disputes Act), 5 U.S.C. 5596 (Back Pay Act), or Title VII, 42 U.S.C. 2000e-16 (Civil Rights Act of 1991). In addition, post-judgment interest is paid on awards eligible for interest under 31 U.S.C. 1304(b) (unsuccessful appeal by the Government).

§ 256.31 How does Fiscal Service compute interest on payments?

Fiscal Service computes interest according to the terms of the statute that waives sovereign immunity for interest to be awarded against the Federal government. The statute that allows interest must be cited on the appropriate Judgment Fund form.

§ 256.32 What documentation must be submitted to the Judgment Fund Branch to preserve the right to seek interest under 31 U.S.C. 1304(b) in a case where the government has taken an appeal?

31 U.S.C. 1304(b) specifies that a “transcript of the judgment” must be filed with the Secretary of the Treasury. This means that a copy of the judgment must be filed with the Judgment Fund Branch for interest to accrue on a judgment of a federal district court, the Court of Appeals for the Federal Circuit, or the United States Court of Federal Claims. By practice, the suc-

cessful plaintiff files a copy of the judgment. Whoever submits the judgment should include a cover letter explaining that it is being submitted to preserve interest rights under 31 U.S.C. 1304. A copy of the judgment and cover letter must be sent to the Bureau of the Fiscal Service, Judgment Fund Branch, at the address indicated on the Judgment Fund Web site at <http://www.fiscal.treasury.gov/judgefund>.

§ 256.33 For what period of time is interest computed under 31 U.S.C. 1304(b)?

Interest is computed from the date that Fiscal Service receives the copy of the judgment until the date preceding the appellate court’s affirmative ruling. If the United States files a Notice of Appeal which it later withdraws, interest is paid on the award through the date before the withdrawal of the Notice of Appeal.

§ 256.34 Does the Judgment Fund pay all litigation costs?

Fiscal Service certifies for payment only those costs that are enumerated in the cost statute, 28 U.S.C. 1920, or as set forth under a statute that specifically governs payment of the award.

Subpart E—Reimbursements to the Judgment Fund

§ 256.40 When must an agency reimburse the Judgment Fund?

Agencies are required to reimburse the Judgment Fund for payments made pursuant to the Contract Disputes Act (CDA), 41 U.S.C. 612, and payments made pursuant to the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (No FEAR), 5 U.S.C. 2301 note. The TFM, available on the Judgment Fund Web site at <http://www.fiscal.treasury.gov/judgefund>, contains more information about how Fiscal Service bills agencies and collects such reimbursements.

§ 256.41 When is reimbursement due for CDA and No FEAR payments?

Reimbursement for a CDA or No FEAR payment should be made promptly upon notification from Fiscal Service of the amount due. If the agency is unable to timely reimburse Fiscal

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Service, the agency must contact Fiscal Service to establish a reimbursement plan. Under Office of Personnel Management (OPM) regulations, No FEAR reimbursements or payment reimbursement plans must be made within 45 days of the request for reimbursement. See 5 CFR part 724. Agencies that do not meet this requirement will be listed on Fiscal Service's public Web site.

Subpart F—Additional Provisions

§ 256.50 How does Fiscal Service process back pay awards?

The submitting agency may request one of two methods to process back pay awards.

(a) One method has three parts. The first part is a payment of net back pay (and interest if authorized), which is sent to the plaintiff or to the plaintiff's attorney, as directed by the submitting agency. The second part is a payment to the agency of deductions from the net back pay. The third part is a payment of attorney fees, which is sent directly to the attorney.

(b) Under the second method, Fiscal Service pays the entire back pay award to the agency out of whose actions the claim arose. The agency then issues amounts representing back pay (and interest if authorized) to the plaintiff and retains amounts representing deductions. Fiscal Service pays the attorney fees directly to the attorney.

[71 FR 60849, Oct. 17, 2006; 71 FR 62050, Oct. 20, 2006]

§ 256.51 Does Fiscal Service report Judgment Fund payments to the IRS as income to the payee on IRS Form 1099?

No, Fiscal Service does not report Judgment Fund payments as potential taxable income to the IRS. Fiscal Service does not have sufficient information about the payment to determine if a Form 1099 must be issued or to prepare such a form when required. To the extent any Form 1099 needs to be issued, it is the responsibility of the agency submitting the payment request to do so.

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§ 256.52 How does Fiscal Service issue a payment?

Pursuant to 31 CFR part 208, Judgment Fund payments are to be made by electronic funds transfer (EFT). Fiscal Service will issue an electronic payment to the payee's account as specified on the appropriate Judgment Fund form. If a submitting agency determines that a waiver (in accordance with 31 CFR part 208) to the requirement for payment by EFT is appropriate, Fiscal Service will issue a payment by check. The Voucher for Payment must direct payment to the payee designated in the judgment or settlement agreement.

§ 256.53 How does the submitting agency know when payment is made?

Fiscal Service will e-mail the agency contact when payment is disbursed, if the agency contact has provided an email address on the appropriate Judgment Fund form. Also, Fiscal Service maintains an on-line payment status system that the submitting agency can access to determine the status of a payment. The payment reporting system can be accessed from the Judgment Fund Web site at <http://www.fiscal.treasury.gov/judgefund>.

§ 256.54 What happens if Fiscal Service denies a request for payment?

Fiscal Service must deny any request for payment that fails to satisfy the requirements of 31 U.S.C. 1304. The submitting agency may request reconsideration of a payment denial. The submitting agency must provide an explanation of how the request for payment meets the four tests contained in section 256.1 of this part. If applicable, requests for reconsideration must contain a reference to the agency's program authority and include specific funding provisions that pertain to the program activity that resulted in the claim. If, upon reconsideration, Fiscal Service determines that payment from the Judgment Fund is appropriate, and the agency has already made payment to the plaintiff or claimant, Fiscal Service will reimburse the agency from the Judgment Fund.